

AMENDED IN SENATE AUGUST 8, 2012

AMENDED IN SENATE JULY 3, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 18, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2179

Introduced by Assembly Member Allen

February 23, 2012

An act to amend ~~Section 309 of, to repeal and repeal~~ Sections 500, 2580, and 2584 of, ~~and to amend, add, and repeal and add~~ Sections 2582 and 2583 of, *and to amend, repeal, and add Section 309 of*, the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 2179, as amended, Allen. Fish and game: enforcement and penalties.

Existing law authorizes the Fish and Game Commission, or any person appointed by the commission, to conduct a hearing, to cause the deposition of witnesses, as prescribed, and to compel the attendance of witnesses and the production of documents and papers, in accordance with certain requirements.

This bill would, *until January 1, 2018*, eliminate the prohibition that the commission not revoke or suspend any license or permit until specified regulations have been adopted and approved, as specified. This bill would, *until January 1, 2018*, also eliminate the provision that

any deliberation conducted by the commission, or conducted by any person appointed by the commission to conduct a hearing, is required to be conducted pursuant to the law governing administrative adjudication.

Existing law requires the commission to adopt guidelines, by regulation, to assist the director and the department in ascertaining the amount of specified civil penalties, as prescribed.

This bill would ~~repeal~~ *make these provisions inoperative until January 1, 2018.*

Existing law permits the Department of Fish and Game to impose civil liability upon any person for specified acts, with prescribed exceptions, done for profit or personal gain, for unlawfully exporting, importing, possessing, receiving, or transporting in interstate commerce any container or package containing any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish unless the container is marked as prescribed, and for any unlawful failure or refusal to maintain any records or paperwork as required. Under existing law, the department may assess a civil penalty of not more than \$10,000 for each bird, mammal, amphibian, reptile, or fish, or for each endangered or threatened species, or each fully protected bird, mammal, or fish unlawfully taken, possessed, transported, imported, received, purchased, acquired, or sold, in addition to any other applicable penalty. Existing law also requires the department to consult with the district attorney in the jurisdiction where a violation is alleged to have occurred and, before proceeding with a civil action, to seek the concurrence of the Attorney General, as described. Existing law permits the Director of Fish and Game to issue a complaint to any person on whom a civil penalty may be imposed, in accordance with specified provisions, and requires a referee or hearing board, as provided for, to conduct any required hearing.

This bill would ~~repeal~~ *make these provisions inoperative until January 1, 2018.* This bill would instead permit the department to impose administrative civil penalties, determined as prescribed, upon any person who has violated any provision of the Fish and Game Code or regulations adopted pursuant to the code. This bill would require the department to adopt regulations that include a fee schedule to provide guidance in assessing these civil penalties. This bill would require, prior to the imposition of administrative penalties, a person to be given a written notice of the proposed action. This bill would require a person

who receives notice of a proposed penalty to have the right to request a hearing before the department in accordance with specified procedures. This bill would permit the department to take the action proposed without a hearing if a hearing is not requested. This bill would permit ~~a party ordered to pay an administrative penalty and who appeared at a hearing~~ *person* to appeal to the director *if administrative penalties are imposed upon that person*, as prescribed. This bill would permit a person served with a copy of an order setting the amount of a civil penalty to file with the superior court a petition for a writ of mandate for review of the order, as specified. This bill would permit the department to file a certified copy of the final decision that directs payment of an administrative penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county, would require the clerk to enter judgment, and would prohibit the clerk from charging fees for the performance of any official service required in connection with this entry of judgment. This bill would require any administrative penalties received pursuant to these provisions to be deposited into the Fish and Game Preservation Fund. *This bill would repeal these provisions as of January 1, 2018.*

Existing law, the California Public Records Act, requires any public record of a state or local agency to be open to inspection at all times during office hours of the agency and, upon request, a copy be made promptly available to any person upon payment of copying costs. The act makes certain records exempt from disclosure.

This bill would, *until January 1, 2018, and* after all appeals are final, provide that records of the appeal to the director are public records, as defined by the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 309 of the Fish and Game Code is
2 amended to read:
3 309. (a) The commission or any person appointed by it to
4 conduct a hearing may, in any investigation or hearing, cause the
5 deposition of witnesses, residing within or without the state, to be
6 taken in the manner prescribed by law for deposition in civil actions
7 in the superior courts of this state under Title 4 (commencing with

1 Section 2016.010) of Part 4 of the Code of Civil Procedure, and
2 may compel the attendance of witnesses and the production of
3 documents and papers. The commission shall adopt regulations
4 that afford procedural and substantive due process to any person
5 whose license or permit is subject to revocation or suspension by
6 the commission.

7 *(b) This section shall remain in effect only until January 1, 2018,*
8 *and as of that date is repealed, unless a later enacted statute, that*
9 *is enacted before January 1, 2018, deletes or extends that date.*

10 ~~SEC. 2. Section 500 of the Fish and Game Code is repealed.~~

11 ~~SEC. 3. Section 2580 of the Fish and Game Code is repealed.~~

12 ~~SEC. 4. Section 2582 of the Fish and Game Code is repealed.~~

13 *SEC. 2. Section 309 is added to the Fish and Game Code, to*
14 *read:*

15 *309. (a) The commission or any person appointed by it to*
16 *conduct a hearing may, in any investigation or hearing, cause the*
17 *deposition of witnesses, residing within or out of the state, to be*
18 *taken in the manner prescribed by law for deposition in civil*
19 *actions in the superior courts of this state under the Civil Discovery*
20 *Act (Title 4 (commencing with Section 2016.010) of Part 4 of the*
21 *Code of Civil Procedure), and may compel the attendance of*
22 *witnesses and the production of documents and papers. The*
23 *commission shall adopt regulations that afford procedural and*
24 *substantive due process to any person whose license or permit is*
25 *subject to revocation or suspension. Except upon conviction of a*
26 *violation of this code or a regulation adopted pursuant to this code*
27 *relating to the licensed or permitted activity and notwithstanding*
28 *any other provision of this code, the commission shall not revoke*
29 *or suspend any license or permit until the regulations required by*
30 *this section have been adopted and approved by the Office of*
31 *Administrative Law pursuant to Chapter 3.5 (commencing with*
32 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
33 *Code.*

34 *(b) Any deliberation conducted by the commission, or conducted*
35 *by any person appointed by the commission to conduct hearings,*
36 *is deemed to be a proceeding required to be conducted pursuant*
37 *to Chapter 5 (commencing with Section 11500) of Part 1 of*
38 *Division 3 of Title 2 of the Government Code or similar provision,*
39 *within the meaning of paragraph (3) of subdivision (c) of Section*
40 *11126 of the Government Code.*

1 (c) *This section shall become operative on January 1, 2018.*

2 SEC. 3. *Section 500 of the Fish and Game Code is amended*
3 *to read:*

4 500. (a) The commission shall, by regulation, adopt guidelines
5 to assist the director and the department in ascertaining the amount
6 of civil penalties to be imposed pursuant to Section 2582 or 2583.
7 The guidelines may include monetary amounts or ranges of
8 monetary amounts that the commission finds are adequate to deter
9 illegal actions and partially compensate the people of California
10 for losses to the fish and wildlife resources from illegal transactions
11 described in Section 2582 or 2583 for profit or personal gain.

12 (b) If the violation involves birds, mammals, amphibians,
13 reptiles, or fish with a value in the aggregate of less than four
14 hundred dollars (\$400) and involves only the transportation, taking,
15 or receipt of fish or wildlife taken or possessed in violation of this
16 code, the guidelines shall provide that the civil penalty shall not
17 exceed the maximum criminal fine provided by law for the
18 violation in this code or ten thousand dollars (\$10,000), whichever
19 is less. For purposes of this section, “value” means the retail market
20 value if a market value exists, the potential monetary gain to the
21 accused or, for commercial species, the established retail market
22 value.

23 (c) The guidelines shall include consideration of the nature,
24 circumstances, extent, and gravity of the prohibited acts committed,
25 and the degree of culpability of the violator, including lesser
26 penalties for acts which have little significant effect upon the
27 resources and greater penalties for acts which may cause serious
28 injury to the resources.

29 (d) Nothing in this chapter or in Chapter 6.5 (commencing with
30 Section 2580) of Division 3 shall be used to establish a monetary
31 value for fish or wildlife resources in connection with any
32 development, project, or land or water use plan or activity as
33 permitted by any federal, state, or local governmental activity.
34 This chapter does not apply to any action brought to recover civil
35 damages under Section 2014.

36 (e) *This section shall become inoperative on January 1, 2013,*
37 *and shall become operative on January 1, 2018.*

38 SEC. 4. *Section 2580 of the Fish and Game Code is amended*
39 *to read:*

1 2580. (a) The definitions in this section govern the construction
2 of this chapter.

3 ~~(a)~~

4 (1) “Qualified hearing officer” means an attorney admitted to
5 the State Bar of California who is knowledgeable in fish and
6 wildlife law.

7 ~~(b)~~

8 (2) “Transport” means to move, convey, carry, or ship by any
9 means, or to deliver or receive for the purpose of movement,
10 conveyance, carriage, or shipment.

11 (b) *This section shall become inoperative on January 1, 2013,*
12 *and shall become operative on January 1, 2018.*

13 SEC. 5. *Section 2582 of the Fish and Game Code is amended*
14 *to read:*

15 2582. (a) The department may impose civil liability upon any
16 person pursuant to this chapter for any of the following acts done
17 for profit or personal gain:

18 (1) Unlawfully export, import, transport, sell, possess, receive,
19 acquire, or purchase, or unlawfully assist, conspire, or aid in the
20 importing, exporting, transporting, sale, possession, receiving,
21 acquisition, or purchasing of, any bird, mammal, amphibian, reptile,
22 or fish which are taken or possessed in violation of this code or
23 the regulations adopted pursuant to this code.

24 (2) Unlawfully export, import, transport, sell, possess, receive,
25 acquire, or purchase, or unlawfully assist, conspire, or aid in the
26 importing, exporting, transporting, sale, possession, receiving,
27 acquisition, or purchasing of any plants, insects, or other species
28 listed pursuant to the California Endangered Species Act (Chapter
29 1.5 (commencing with Section 2050)), which are taken or
30 possessed in violation of this code or the regulations adopted
31 pursuant to this code.

32 (3) Unlawfully export, import, transport, sell, possess, receive,
33 acquire, or purchase any bird, mammal, amphibian, reptile, or fish,
34 or any endangered or threatened species, or any fully protected
35 bird, mammal, or fish which has been taken, possessed, transported,
36 or sold in violation of this code or the regulations adopted pursuant
37 to this code.

38 (4) Unlawfully possess any bird, mammal, amphibian, reptile,
39 or fish, or any endangered or threatened species, or any fully
40 protected bird, mammal, or fish which has been taken, possessed,

1 transported, or sold in violation of this code or any regulations
2 adopted pursuant to this code within the maritime and territorial
3 jurisdiction of the state or within the portions of the special
4 maritime jurisdiction of the United States upon which the State of
5 California exercises concurrent jurisdiction, either by statute,
6 deputization, or by contract with the United States.

7 (5) Having exported, imported, transported, sold, purchased, or
8 received any bird, mammal, amphibian, reptile, or fish, or any
9 endangered or threatened species, or any fully protected bird,
10 mammal, or fish, unlawfully make or submit any false record,
11 account, label, or identification thereof.

12 (6) Attempt to commit any unlawful act, or unlawfully attempt
13 to commit any act, described in paragraphs (1) to (5), inclusive.

14 (b) The department may impose civil liability upon any person
15 pursuant to this chapter for unlawfully exporting, importing,
16 possessing, receiving, or transporting in interstate commerce any
17 container or package containing any bird, mammal, amphibian,
18 reptile, or fish, or any endangered or threatened species, or any
19 fully protected bird, mammal, or fish unless the container or
20 package has previously been plainly marked, labeled, or tagged
21 in accordance with this code and the regulations adopted pursuant
22 to this code.

23 (c) The department may impose civil liability upon any person
24 pursuant to this chapter for any unlawful failure or refusal to
25 maintain any records or paperwork as required by this code.

26 (d) *This section shall become inoperative on January 1, 2013,*
27 *and shall become operative on January 1, 2018.*

28 ~~SEC. 5.~~

29 *SEC. 6.* Section 2582 is added to the Fish and Game Code, to
30 read:

31 2582. (a) The department may impose administrative civil
32 penalties upon any person who has violated any provision of this
33 code or implementing regulations adopted pursuant to this code.
34 Penalties imposed pursuant to this subdivision shall not exceed
35 those penalties established in Section 747 of Title ~~17~~ 14 of the
36 California Code of Regulations. Except as provided in Section
37 2583, the proceedings for all hearings conducted by the department
38 *pursuant to this section* shall be conducted in accordance with
39 Chapter ~~5~~ 4.5 (commencing with Section ~~11500~~ 11400) of Part
40 1 of Division 3 of Title 2 of the Government Code. The department

1 shall have all of the powers granted in that chapter. The monetary
2 amounts shall be levied in an amount that is considered to be
3 adequate to deter repeated offense of the illegal activity and shall
4 include consideration of the nature, circumstances, extent, and
5 gravity of the prohibited acts committed and the degree of
6 culpability of the violator, including lesser penalties for acts that
7 have little significant effect upon the resources and greater penalties
8 for acts that may cause serious injury to the resources. The civil
9 penalty for a violation punishable as an infraction shall not exceed
10 an amount higher than the criminal penalty authorized in statute.

11 (b) Notwithstanding subdivision (a), any person who, for
12 ~~personal profit or commercial or financial purposes, or for profit~~
13 ~~or personal gain~~, violates this code or any regulation adopted to
14 carry out this code, including, but not limited to, violations of
15 Section 12012 or 12013, and with the exercise of due care, should
16 have known that the birds, mammals, amphibians, reptiles, or fish,
17 or the endangered or threatened species, or the fully protected
18 birds, mammals, or fish were taken, possessed, transported,
19 imported, received, purchased, acquired, or sold in violation of,
20 or in a manner unlawful under this code, may be assessed a civil
21 penalty. The civil penalty imposed under this ~~chapter~~ *subdivision*
22 by the department shall not exceed ten thousand dollars (\$10,000)
23 for each bird, mammal, amphibian, reptile, or fish, or for each
24 endangered or threatened species, or each fully protected bird,
25 mammal, or fish unlawfully taken, possessed, transported,
26 imported, received, purchased, acquired, or sold. This civil penalty
27 may be in addition to any other penalty, civil or criminal, provided
28 in this code or otherwise by law.

29 (c) The department shall adopt regulations that include a fee
30 schedule to provide guidance in assessing a civil penalty pursuant
31 to this section.

32 (d) *This section shall remain in effect only until January 1, 2018,*
33 *and as of that date is repealed, unless a later enacted statute, that*
34 *is enacted before January 1, 2018, deletes or extends that date.*

35 ~~SEC. 6. Section 2583 of the Fish and Game Code is repealed.~~

36 *SEC. 7. Section 2583 of the Fish and Game Code is amended*
37 *to read:*

38 2583. (a) Except as provided in subdivision (b), any person
39 who violates this code or any regulation adopted to carry out this
40 code, and, with the exercise of due care, should have known that

1 the birds, mammals, amphibians, reptiles, or fish, or the endangered
2 or threatened species, or the fully protected birds, mammals, or
3 fish were taken, possessed, transported, imported, received,
4 purchased, acquired, or sold in violation of, or in a manner unlawful
5 under, this code, may be assessed a civil penalty. The civil penalty
6 imposed under this chapter by the department shall not be more
7 than ten thousand dollars (\$10,000) for each bird, mammal,
8 amphibian, reptile, or fish, or for each endangered or threatened
9 species, or each fully protected bird, mammal, or fish unlawfully
10 taken, possessed, transported, imported, received, purchased,
11 acquired, or sold. This civil penalty may be in addition to any other
12 penalty, civil or criminal, provided in this code or otherwise by
13 law.

14 (b) No civil penalties shall be imposed under this chapter until
15 the guidelines for the imposition of the penalties are adopted by
16 the commission pursuant to Section 500.

17 (c) *This section shall become inoperative on January 1, 2013,*
18 *and shall become operative on January 1, 2018.*

19 ~~SEC. 7.~~

20 SEC. 8. Section 2583 is added to the Fish and Game Code, to
21 read:

22 2583. (a) Prior to the imposition of administrative penalties
23 ~~under pursuant to~~ Section 2582, a person shall be given a written
24 notice of the proposed action that includes the basis for the action.
25 A person who receives notice of a proposed penalty shall have the
26 right to request a hearing before the department within 60 days
27 after receiving the ~~denial or~~ notice of the proposed action. A notice
28 of the proposed action that is sent by certified mail to the last
29 known address of the person against whom the action is proposed
30 shall be considered received even if delivery is refused or the notice
31 is not accepted at that address.

32 (b) If a hearing is requested within 60 days of receipt of the
33 notice of the proposed action, notice of the time and place of the
34 hearing shall be given at least 10 days before the date set for the
35 hearing. A deferral of the hearing shall be granted upon reasonable
36 cause, not to exceed 20 days from the date of the original hearing
37 date.

38 (c) (1) At the hearing, the person shall be given an opportunity
39 to present any *relevant* evidence or argument on his or her own
40 behalf. Oral testimony may be given by telephone in lieu of

1 attending a hearing. This testimony shall be recorded and made
2 part of the record. Recorded testimony shall be kept for 180 days
3 or until the judgment is final. A transcription shall be provided to
4 a party upon payment of a reasonable fee for the cost of obtaining
5 the transcript.

6 (2) ~~The department~~ *hearing officer* shall take into consideration
7 the nature of the violation, the circumstances, extent, and gravity
8 of the prohibited acts committed, the degree of culpability of the
9 violator, and, ~~in deliberation, the department shall take into~~
10 ~~consideration acts that have little significant effect upon resources~~
11 ~~and acts that have more significant~~ *the effect of the violation upon*
12 *natural resources.*

13 (3) ~~If at the hearing the person is ordered to pay an~~
14 ~~administrative penalty, the~~ *The hearing officer shall issue a written*
15 *decision within 30 days after the hearing. If administrative*
16 *penalties are imposed upon a person, that person may appeal to*
17 *the director within 30 days of mailing or personal service of the*
18 *department's decision.*

19 (d) If a hearing is not requested in a timely manner, the
20 department may take the action proposed without a hearing.

21 (e) The following shall apply to an appeal to the director:

22 (1) The appeal shall be in writing and signed by the appellant
23 or his or her authorized agent and shall state the grounds for the
24 appeal.

25 (2) Any party, at the time of filing the appeal or within 10 days
26 of the filing, may present written evidence and a written argument
27 to the ~~secretary~~ *director.*

28 (3) The director may grant oral arguments upon application
29 made at the time written arguments are made.

30 (4) If an application to present an oral argument is granted,
31 written notice of the time and place for the oral argument shall be
32 given at least 10 days prior to the date set for the oral argument.
33 This time requirement may be changed upon agreement between
34 ~~the commission and the person appealing~~ *parties and the director.*
35 Oral testimony may be given by telephone in lieu of attending a
36 hearing. This testimony shall be recorded and made part of the
37 record. Recorded testimony shall be kept for 180 days or until the
38 judgment is final. A transcription shall be provided to a party upon
39 payment of a reasonable fee for the cost of obtaining the transcript.

(5) The director shall decide the appeal based on any oral or written arguments, briefs, and evidence received. The department director shall take into consideration the nature of the violation, the circumstances, extent, and gravity of the prohibited acts committed, the degree of culpability of the violator, and, in deliberation, the department shall take into consideration acts that have little significant effect upon resources and acts that have more significant the effect of the violation upon natural resources.

(6) The director shall render a written decision within 45 days of the date of the appeal or within 15 days of the date of oral arguments. A copy of the director's decision shall be delivered or mailed to the appellant.

(7) The director may sustain the hearing officer's decision, modify the decision by reducing adjusting the amount of the penalty levied, or reverse the decision.

(8) Within 30 days after service of a copy of an order setting the amount of the civil penalty, any person so served may file with the superior court a petition for a writ of mandate for review of the order. In all proceedings pursuant to this paragraph, the court shall exercise its independent judgment on the evidence in the whole record. The filing of a petition for a writ of mandate shall not stay any other civil or criminal action.

(f) The records of the appeal pursuant to subdivision (e), after all appeals are final, are public records, as defined in subdivision (e) of Section 6252 of the Government Code.

(g) After completion of the review procedure provided in this section, the department may file a certified copy of the final decision that directs payment of an administrative penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(h) Any administrative penalties received pursuant to this section shall be deposited in the Fish and Game Preservation Fund.

(i) For purposes of this section, "director" means the Director of Fish and Game or a deputy director designated by the Director of Fish and Game to hear an appeal on his or her behalf.

1 (j) *This section shall remain in effect only until January 1, 2018,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2018, deletes or extends that date.*

4 ~~SEC. 8. Section 2584 of the Fish and Game Code is repealed.~~

5 SEC. 9. *Section 2584 of the Fish and Game Code is amended*
6 *to read:*

7 2584. (a) Upon an actionable violation, the department shall
8 consult, as to the appropriate civil or criminal remedy, with the
9 district attorney in the jurisdiction where the violation was alleged
10 to have occurred. Before proceeding with a civil action, the
11 department shall seek the concurrence of the Attorney General.

12 (b) The director shall appoint a qualified referee or hearing
13 board, composed of one or any combination of the following
14 persons:

15 (1) A qualified hearing officer, as defined in subdivision (a) of
16 Section 2580.

17 (2) A retired judge of the Superior Court who is knowledgeable
18 in fish and wildlife law.

19 (3) A qualified neutral referee, appointed upon petition to the
20 Superior Court in which the violation was alleged to have occurred.

21 (c) The director, after investigation of the facts and
22 circumstances, may issue a complaint to any person on whom a
23 civil penalty may be imposed pursuant to Section 2582 or 2583.
24 The complaint shall allege the acts or failures to act that constitute
25 a basis for a civil penalty and the amount of the proposed civil
26 penalty. The complaint shall be served by personal service or
27 certified mail and shall inform the person so served that a hearing
28 shall be conducted within 60 days after the person has been served,
29 unless the person waives the right to a hearing. If the person waives
30 the right to a hearing, the department shall issue an order setting
31 liability in the amount proposed in the complaint. If the person has
32 waived the right to a hearing or if the department and the person
33 have entered into a settlement agreement, the order shall be final.

34 (d) Any hearing required under this section shall be conducted
35 by a referee or hearing board according to the procedures specified
36 in Sections 11507 to 11517, inclusive, of the Government Code,
37 except as otherwise provided in this section. In making a
38 determination, the hearing officer may consider the records of the
39 department in the matter, the complaint, and any new facts brought
40 to his or her attention by that person. The hearing officer shall be

1 the sole trier of fact as to the existence of a basis for liability under
2 Section 2582 or 2583. The hearing officer shall make the
3 determination of the facts of the case and shall prepare and submit
4 the proposed decision, including recommended penalty assessment,
5 to the director for his or her review and assistance in the penalty
6 assessment process.

7 (e) The director may assess the civil penalty, and may reduce
8 the amount, or not impose any assessment, of civil penalties based
9 upon the nature, circumstances, extent, and gravity of the prohibited
10 acts alleged, and the degree of culpability of the violator; or the
11 director may enter into a settlement agreement with the person in
12 the best interests of the state or confirm the amount of civil
13 penalties contained in the complaint. If the director reduces the
14 amount of the civil penalty, does not impose the civil penalty, or
15 enters into a settlement agreement, the director shall seek the
16 recommendation of the hearing officer and enter into the records
17 of the case the reasons for that action, including the hearing
18 officer's recommendation. The decision of the director assessing
19 the civil penalty is final. The proposed decision is a public record
20 and shall be served upon the person. The director may approve the
21 proposed decision in its entirety, or the director may reduce the
22 proposed penalty and adopt the balance of the proposed decision.

23 (f) Upon the final assessment of the civil penalty, the department
24 shall issue an order setting the amount of the civil penalty to be
25 imposed. An order setting civil liability under this section becomes
26 effective and final upon the issuance thereof, and payment shall
27 be made within 30 days of issuance. Copies of the order shall be
28 served by personal service or by certified mail upon the person
29 served with the complaint and upon other persons who appeared
30 before the director and requested a copy. Copies of the order shall
31 be provided to any person within 10 days of receipt of a written
32 request from that person.

33 (g) Within 30 days after service of a copy of an order setting
34 the amount of the civil penalty, any person so served may file with
35 the superior court a petition for a writ of mandate for review of
36 the order. In all proceedings pursuant to this subdivision, the court
37 shall exercise its independent judgment on the evidence in the
38 whole record. The filing of a petition for a writ of mandate shall
39 not stay any other civil or criminal action.

1 (h) The records of the case, after all appeals are final, are public
2 records, as defined in subdivision (d) of Section 6252 of the
3 Government Code.

4 (i) *This section shall become inoperative on January 1, 2013,*
5 *and shall become operative on January 1, 2018.*

O